

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jacqueline Levy(F)	Team: Team # 6	CCRB Case #: 201203864	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/23/2012 6:00 PM	Location of Incident: 2800 86th Street	Precinct: 60	18 Mo. SOL 9/23/2013	EO SOL 9/23/2013	
Date/Time CV Reported Mon, 03/26/2012 10:26 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 03/26/2012 10:26 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Walsh	17054	945089	PSA 1
2. POM Jermaine Taylor	23344	937613	PSA 1
3. POM Joshua Konen	00966	936882	PSA 1
4. An officer			PSA1

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Walsh	Abuse: PO Michael Walsh questioned § 87(2)(b)	
B.POM Joshua Konen	Abuse: PO Joshua Konen questioned § 87(2)(b)	
C.POM Jermaine Taylor	Abuse: PO Jermaine Taylor questioned § 87(2)(b)	
D.POM Joshua Konen	Abuse: PO Joshua Konen frisked § 87(2)(b)	
E.POM Joshua Konen	Abuse: PO Joshua Konen searched § 87(2)(b)	
F.POM Michael Walsh	Force: PO Michael Walsh used physical force against § 87(2)(b)	
G. An officer	Force: An officer used physical force against § 87(2)(b)	
H.POM Michael Walsh	Discourtesy: PO Michael Walsh spoke obscenely and/or rudely to § 87(2)(b)	

Case Summary

On March 26, 2012, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System on behalf of her § 87(2)(b) old son, § 87(2)(b) (encl. 4A-B); § 87(2)(b) did not witness the incident. On March 23, 2012, at 6:05 p.m., PO Michael Walsh, PO Joshua Konen, and PO Jermaine Taylor, of PSA1, approached § 87(2)(b) as he was walking at 2800 86th Street in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority:** PO Michael Walsh questioned § 87(2)(b)
- **Allegation B – Abuse of Authority:** PO Joshua Konen questioned § 87(2)(b)
- **Allegation C – Abuse of Authority:** PO Jermaine Taylor questioned § 87(2)(b)
§ 87(2)(g)
- **Allegation D – Abuse of Authority:** PO Joshua Konen frisked § 87(2)(b) Because § 87(2)(b), § 87(2)(g)
- **Allegation E – Abuse of Authority:** PO Joshua Konen searched § 87(2)(b) The § 87(2)(g)
- **Allegation F – Force:** PO Michael Walsh used physical force against § 87(2)(b)
- **Allegation G – Force:** An officer used physical force against § 87(2)(b) § 87(2)(g)
- **Allegation H – Discourtesy:** PO Michael Walsh spoke discourteously to § 87(2)(b) § 87(2)(g)

This complaint was eligible for mediation. However, § 87(2)(b) rejected mediation.

Results of Investigation

Civilian Statement

Victim: § 87(2)(b)

- § 87(2)(b)

Statements to Medical Personnel: § 87(2)(b) Hospital

On § 87(2)(b), at 9:43 a.m., § 87(2)(b) stated that he had been assaulted by police on March 23, 2012 at 6:00 p.m. and complained of pain to the right side of his chest, a right wrist contusion, and bleeding from behind the right ear. At 9:46 a.m. and 10:08 a.m., § 87(2)(b) complained of pain to his neck, right shoulder, right wrist, and head. § 87(2)(b) stated that he waited to go to the doctor from the day before because he wanted to sleep.

CCRB Testimony

On March 29, 2012, § 87(2)(b) provided a telephone statement (encl. 5A). On April 13, 2012, § 87(2)(b) was interviewed at the CCRB (encl. 5B-G). His statements were generally consistent and are summarized below.

On March 23, 2012, at 6:05 p.m., § 87(2)(b) walked to the store in the vicinity of 2800 86th Street in Brooklyn. While walking, he took his phone in and out of his right front jeans pocket while conducting several text message conversations. He also repeatedly grabbed the right side of his jeans to pull them up because they were falling down. He was wearing a red sweater hoodie with one front pocket, blue jeans, and white Adidas sneakers. In his left back pants pocket was his wallet. Three officers in a blue unmarked 15-passenger van, identified through investigation as PO Michael Walsh, PO Joshua Konen, and PO Jermaine Taylor of PSA1, drove up to him.

The officers got out of the vehicle and approached him. PO Walsh asked him why his hand was at his waist. § 87(2)(b) told the officers that he did not have anything in his waist. PO Konen lifted § 87(2)(b)'s hoodie, patted down his waist and his legs, and reached into his hoodie and pants pockets. PO Konen took § 87(2)(b)'s wallet out of his rear pants pocket to check the pocket. PO Konen asked for ID and handed § 87(2)(b) his wallet. § 87(2)(b) handed PO Konen the ID from his wallet. PO Walsh grabbed his phone from his hand. While PO Konen checked § 87(2)(b)'s ID, § 87(2)(b) sat on a gate with PO Walsh and PO Taylor standing to his side.

PO Walsh asked § 87(2)(b) if he had previously been arrested or had any open cases. He told PO Walsh that he was in school and had a job and that there was no need to stop him and run his name. PO Walsh told § 87(2)(b) to put his hands on the car and § 87(2)(b) refused. PO Walsh grabbed § 87(2)(b) by the arm and pulled him off the gate, causing a small cut on his wrist. PO Walsh took out his handcuffs. § 87(2)(b) turned away while PO Walsh pulled him to get out of PO Walsh's grip so that he could ask him why he was putting § 87(2)(b) in handcuffs. The other officers pushed him against the vehicle by his arms. An officer he could not see knelt § 87(2)(b) in the back and he fell backward to the ground. His head hit the ground first, causing a two inch cut above his right ear. The officers picked § 87(2)(b) up by the sweater, placed the other handcuff on him, and pulled him around the van to the side with the door. § 87(2)(b) pulled back but the officers were stronger than him. § 87(2)(b) asked the officers why he was being arrested and said that he was not getting in the car. § 87(2)(b) screamed to bystanders for help. PO Taylor picked him up by his feet and put him into the van head first and stomach down. § 87(2)(b) sat up once in the van. Eight or nine people approached the scene as § 87(2)(b) was being put in the van. The officers honked the horn to clear their path and drove to the stationhouse.

In the van, PO Walsh said, "You fucking pussy. I thought you were going to cry for your mother next." § 87(2)(b) told the officers that he had a legal shield which was a "Legal Shield defender card" and they had to release him. PO Walsh said, "That bullshit don't work."

He was in the stationhouse for fifteen minutes while he was issued a summons. His phone was returned to him when he left the stationhouse. The next day, § 87(2)(b) went to the hospital to be treated for the cut to the head. § 87(2)(b) showed the undersigned investigator a photo of the cut to his head after his interview and stated that he would print it and mail it to the CCRB, but he has not done so.

§ 87(2)(b) described PO Walsh as a white male who stood 5'8" tall with a medium build, with shield number 17054. He described PO Konen as a white male who stood 6'3" tall with a muscular build. He described PO Taylor as a black male.

Attempts to Contact Civilians

Though § 87(2)(b) stated that his mother, § 87(2)(b) knew some of the witnesses, neither he nor § 87(2)(b) provided any names or contact information for the witnesses.

NYPD Statements

Subject Officer: PO MICHAEL WALSH

- *PO Walsh, § 87(2)(b) at the time of the incident, is a white male who stands 5'7" tall, weighs 167 pounds, and has brown hair and blue eyes.*

- On March 23, 2012, PO Walsh worked from 4:00 p.m. to 12:35 a.m. on March 24, 2012. He was assigned to the Anti-Crime team with PO Joshua Konen and PO Jermaine Taylor. He was in plainclothes and assigned to an unmarked van.

Memo Book (encl. 6A-C)

In his memo book, PO Walsh noted that at 6:05 p.m., he stopped § 87(2)(b) in front of 2800 86th Street. § 87(2)(b) was issued a summons.

Summons Number § 87(2)(b) (encl. 7)

§ 87(2)(b) committed disorderly conduct – excessive noise in front of 2800 86th Street.

CCRB Testimony (encl. 8A-C)

On May 31, 2012, PO Walsh was interviewed at the CCRB. On March 23, 2012, at 6:05 p.m., PO Walsh was patrolling the area of 2800 86th Street in Brooklyn and observed a young man, § 87(2)(b) walking up a pathway within a NYCHA development while cursing and irritating those in his vicinity, causing a crowd to gather. PO Walsh did not remember how far away they were when they first saw § 87(2)(b) but they could hear him yelling. There were a lot of people around; PO Walsh stated that there were definitely more than ten people. PO Walsh could not tell at whom, if anyone, § 87(2)(b) was yelling. People were walking away from § 87(2)(b) PO Walsh, along with PO Konen and PO Taylor, stopped § 87(2)(b) after following him for about a minute. § 87(2)(b) cursed at the officers. PO Walsh did not recall § 87(2)(b) carrying anything, including a cellphone, at that time.

After observing § 87(2)(b)'s erratic behavior, the officers all got out of the vehicle and asked § 87(2)(b) if everything was okay. PO Walsh did not recall who first spoke to § 87(2)(b) but they all did speak to him. PO Walsh did not recall how long the officers had been speaking with § 87(2)(b) before one of them, PO Walsh could not recall who, asked § 87(2)(b) for ID. PO Walsh did not remember any officer asking § 87(2)(b) if he had anything in his waistband. PO Walsh stated specifically that weapons were not a concern or basis for the stop. They asked for ID because he was causing a disturbance. It was their intention to issue him a summons for disorderly conduct. After several requests, § 87(2)(b) handed his ID to PO Konen, who ran it in the van to check for any outstanding warrants. PO Walsh did not recall § 87(2)(b) sitting on or leaning against a fence. During that time, § 87(2)(b) cursed loudly and was inches from PO Walsh and PO Taylor's faces. He waved his hands and moved toward the officers. § 87(2)(b) said, "Fuck you." PO Walsh did not remember if there was substance or subject matter in § 87(2)(b)'s yelling. For their safety, and that of § 87(2)(b) PO Walsh and PO Taylor decided to place § 87(2)(b) in handcuffs. PO Konen had been away just long enough to turn on the computer when the decision was made. PO Walsh and PO Taylor first asked § 87(2)(b) to put his hands behind his back, but he did not comply. § 87(2)(b) held his arms against his sides. PO Walsh grabbed § 87(2)(b)'s arms attempting to place them behind his back, but § 87(2)(b) wiggled out of the § 87(2)(b) position. PO Konen came out of the van after processing the ID and helped PO Walsh and PO Taylor handcuff § 87(2)(b). An additional crowd surrounded the scene, several of whom cursed at the officers. PO Walsh did not remember whether the handcuffing process occurred against the van; he also did not remember making contact with any part of § 87(2)(b)'s body other than his arms. § 87(2)(b) was not kneed in the back. PO Walsh did not remember how long it took to handcuff § 87(2)(b) was screaming and cursing the entire time; PO Walsh did not remember if anything § 87(2)(b) said was directed at them or to the gathering crowd.

Once he was handcuffed, § 87(2)(b) went limp. The officers held him by the arms so he did not hit the floor. § 87(2)(b)'s head never hit the ground, van, or anything else. After PO Walsh carried § 87(2)(b) while limp with the help of one or both of his partners, § 87(2)(b) began to voluntarily walk into the van. PO Walsh held § 87(2)(b)'s arm until he was seated inside the vehicle. § 87(2)(b) was never lying across the floor of the van. At no point did he or any of the

other officers make contact with § 87(2)(b)'s legs.

PO Walsh did not recall which officer sat in the back seat of the van with § 87(2)(b). He was unsure which officer was driving the vehicle. PO Walsh did not see any injuries on § 87(2)(b)'s body, specifically the cut above his right ear, and never heard § 87(2)(b) complain of any other injuries. PO Walsh did not remember § 87(2)(b) being frisked. PO Walsh stated that neither he nor the other officers placed their hands in § 87(2)(b)'s pockets. PO Konen and PO Taylor were not out of PO Walsh's line of sight with § 87(2)(b). PO Walsh did not say, "You fucking pussy, I thought you were going to cry to your mother next"; additionally, he stated that no profanities were verbalized by the officers throughout the incident, including the word "bullshit." PO Walsh did not recall seeing § 87(2)(b) display any type of legal card.

At the stationhouse, § 87(2)(b) was issued a summons for disorderly conduct. § 87(2)(b) apologized for his behavior and stated that he had anger management issues.

Subject Officer: PO JOSHUA KONEN

- *PO Konen, § 87(2)(b) at the time of the incident, is a white male who stands 5'11" tall, weighs 215 pounds, and has blond hair and blue eyes.*
- *On March 23, 2012, PO Konen worked from 4:00 p.m. to 12:35 a.m. on March 24, 2012. He was assigned to Anti-Crime with PO Jermaine Taylor and PO Michael Walsh. He was in plainclothes and was the operator of an unmarked van.*

Memo Book (encl. 11A-B)

In his memo book, PO Konen noted that at 6:05 p.m., PO Walsh stopped one male in front of 2800 86th Street. PO Walsh issued him a summons.

CCRB Testimony (encl. 12A-C)

On May 30, 2012, PO Konen was interviewed at the CCRB. His statement was generally consistent with PO Walsh's statement, save for the noted discrepancies and additional information.

The officers were concerned that § 87(2)(b) may have been a victim of a crime because of the way he was acting, particularly yelling and cursing, but § 87(2)(b) was stopped for disorderly conduct. PO Konen, as the operator, was the last officer out of their van; one of the other officers made first contact. § 87(2)(b) waved his hands in addition to cursing at the officers; PO Konen could not tell if § 87(2)(b) was talking with his hands or trying to get physical with the officers. After approximately one minute, the officers asked § 87(2)(b) for ID. PO Konen did not know if PO Walsh intended to issue § 87(2)(b) a summons at this time; PO Walsh was the lead officer and it was his decision whether to issue a summons.

PO Konen obtained § 87(2)(b)'s ID from one of the other officers; he did not know how they got the ID from § 87(2)(b). At some point, § 87(2)(b) was leaning against or sitting on the fence but PO Konen did not recall at what point this occurred. PO Konen then separated from his partners for several minutes to run the ID in the van and check for any outstanding warrants. Between one and five minutes later, PO Konen heard commotion at the back of the van. During that period, he could not see what transpired between PO Walsh and PO Taylor and § 87(2)(b). He exited the vehicle, and saw PO Taylor and PO Walsh place § 87(2)(b) against the van and attempt to handcuff on him, as § 87(2)(b) continued screaming. At this time, a crowd from across the street came to the scene to watch the commotion. When PO Konen returned to help PO Walsh and PO Taylor, they had already gained some control over § 87(2)(b)'s arms but § 87(2)(b) was not in handcuffs. The officers made physical contact with § 87(2)(b)'s back and arms, using solely their hands, as he resisted the handcuffs; PO Konen made contact with § 87(2)(b) on his right arm and upper back, but said he and the other officers did not use any additional force. § 87(2)(b) was not kned in the back. After successfully handcuffing § 87(2)(b), § 87(2)(b) went limp but did not hit the ground because the officers were holding him by the arms.

Before § 87(2)(b) was placed in the van, he was frisked by one of the officers; PO Konen did not remember who frisked § 87(2)(b). At that time, PO Konen became aware that § 87(2)(b) had a cell phone on his person. PO Konen held § 87(2)(b) by his right arm and back and another officer had his other arm to bring him to the van. The third officer may have held § 87(2)(b)'s legs but PO Konen was not sure that all three officers assisted in bringing § 87(2)(b) to the van. The officers lifted him by his arms until he stepped into the van. PO Konen did not remember any officer making contact with § 87(2)(b)'s legs.

PO Konen stated that § 87(2)(b)'s head was never against a fence or the van. He also stated that he did not observe any injuries on § 87(2)(b). § 87(2)(b) does not know when the cut on § 87(2)(b)'s ear was sustained, and never heard § 87(2)(b) complain of any other injuries during the incident. He was unaware that § 87(2)(b) had sustained an injury prior to the interview. PO Konen stated that at no point did he or his partners state, "You fucking pussy. I thought you were going to cry to your mother next," nor did he recall using any profanities, including "bullshit," towards § 87(2)(b). PO Konen did not see § 87(2)(b) produce a legal defenders card.

PO Konen stated he did not see § 87(2)(b) earlier that day, but he may have dealt with § 87(2)(b) in a past incident, the details of which he did not recall.

Subject Officer: PO JERMAINE TAYLOR

- PO Taylor, § 87(2)(b) at the time of the incident, is a black male who stands 6' tall, weighs 196 pounds, and has black hair and brown eyes.
- On March 23, 2012, PO Taylor worked from 4:00 p.m. to 12:35 a.m. on March 24, 2012. He assigned to the anti-crime team with PO Joshua Konen and PO Michael Walsh. He was in plainclothes and assigned to an unmarked van.

Memo Book (encl. 9A-C)

In his memo book, PO Taylor noted that he had one individual stopped at 2800 86th Street. PO Walsh arrested the individual at 6:10 p.m.

CCRB Testimony (encl. 10A-C)

On May 30, 2012, PO Taylor was interviewed at the CCRB. His statement was generally consistent with PO Walsh's and PO Konen's statements save for the noted discrepancies and additional information.

When they approached § 87(2)(b) the officers first attempted to figure out what was going on, but when § 87(2)(b) continued yelling and cursing and did not answer their questions, one of the officers requested ID. They did not ask § 87(2)(b) if he had anything in his waist. § 87(2)(b) initially refused, but then agreed to present his ID, which he took out of a wallet in his pocket. The officers asked for ID because § 87(2)(b) was acting unruly and they did not know if he was a victim of a crime or had committed a crime or if something else was going on; there had not yet been a decision as to whether § 87(2)(b) was going to be issued a summons.

PO Konen went to the back of the van to run the ID while PO Taylor and PO Walsh talked to § 87(2)(b). § 87(2)(b) continued to act "ballistic" and speak in an elevated tone; he also waved his hands in PO Taylor's and PO Walsh's faces and moved toward the officers. PO Taylor and PO Walsh instructed him to step back and keep his hands away from the officers. PO Taylor described § 87(2)(b)'s behavior as uncooperative and very loud and disruptive, attracting the attention of passers-by. § 87(2)(b) was standing near the fence along the sidewalk.

Due to his erratic behavior and potentially harmful hand movements, PO Taylor decided to place § 87(2)(b) in handcuffs. PO Taylor later added that he and at least one other officer frisked § 87(2)(b) for weapons before he was placed in handcuffs. PO Taylor did not feel anything during the frisk. PO Konen returned without having run § 87(2)(b)'s ID to assist them. The officers had to forcibly handcuff § 87(2)(b) by grabbing his hands and placing him against the

van; PO Taylor stated no other force was used. § 87(2)(b) screamed and attracted more attention. § 87(2)(b) also struggled with the officers; he tried to pull his hands away from the officers. PO Taylor, PO Walsh, and PO Konen attempted to put § 87(2)(b) in the police van. § 87(2)(b) resisted by going limp and dropping to the ground on his legs, all while screaming and cursing; it sounded to PO Taylor as if § 87(2)(b) was yelling as if the police officers had harmed him because he was yelling for people across the street to come help him. PO Taylor claimed that he and the other officers had barely touched § 87(2)(b). The officers grabbed him by the hand and helped him up. PO Taylor and one of the other officers lifted § 87(2)(b) up by the armpits to get him into the van. PO Taylor did not recall any officer making contact with § 87(2)(b)'s legs. The officers drove to the stationhouse; they wanted to get § 87(2)(b) away from the scene because of the growing crowd and because § 87(2)(b) would not calm down.

At the stationhouse, PO Taylor again mentioned that he stopped § 87(2)(b) simply to see if anything was wrong. § 87(2)(b) admitted to having a bad temper and told the officers that they caught him at a bad time.

PO Taylor did not observe a cut on § 87(2)(b)'s head and did not hear § 87(2)(b) complain of a cut on his head or of any other injury. § 87(2)(b)'s head never made contact with the ground, the fence, or the van. PO Taylor stated he and the other officers never reached into § 87(2)(b)'s pocket. PO Taylor also stated that § 87(2)(b) never presented any legal papers, such as a legal defenders card. No officer used any profanities during the incident.

Medical Records

§ 87(2)(b) Hospital (encl. 13A-DD)

On § 87(2)(b) 9:43 a.m., § 87(2)(b) was treated at the § 87(2)(b) Hospital emergency room § 87(2)(b). The initial emergency room diagnosis was a contusion to the wrist. He described the pain level as 8 to 9 and complained of pain to the right side of his chest, a right wrist contusion, and bleeding from behind the right ear. No abnormalities were observed in his neck. At 10:45 a.m., he was observed to have no acute pain. § 87(2)(b) had tenderness to the lower right wall of his chest wall but no further injury to that area. § 87(2)(b) showed swelling to his right wrist. An x-ray of the wrist and chest showed no fractures or dislocations to wrist or ribs. The primary diagnosis was a contusion to the wrist and the secondary diagnosis was contusion of the chest wall. At 11:34 a.m., § 87(2)(b) reported decreased pain, a pain level of two to three.

Summons for Incident and Disposition

- The Office of Court Administration has no record of summons no. § 87(2)(b) (encl. 17).

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York with regard to the incident as of September 12, 2012, more than 90 days after the incident (encl. 18).

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Subject Officers CCRB History

- PO Walsh has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 2A).
- PO Konen has been a member of the service for eight years and there is one substantiated CCRB allegation against him (encl. 2B):
 - In case number 200816537, an allegation of a frisk was substantiated and PO Konen received instructions.
- PO Taylor has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. 2C).

Conclusion

Identification of Subject Officers

- PO Walsh admitted to and the other officers confirmed that PO Walsh was the lead officer in this interaction. § 87(2)(b) also provided PO Walsh's shield number, 17054 that he had obtained from PO Walsh's badge, which CTS confirmed belonged to PO Walsh, and stated that he was the officer who was doing most of the talking, grabbed him off of the fence by the arm, and used discourtesies while in the police van. Therefore, allegations A, F, and H are pleaded against PO Walsh.
- § 87(2)(b) described the subject of allegations D and E as a white male who was the tallest of the officers and had a muscular build. He also stated that the subject officer was the officer who ran his ID. PO Konen is a white male who stands 5'11" tall and weighs 215 pounds while PO Walsh is 5'7" tall and weighs 167 pounds and PO Taylor is a black male. PO Konen also stated that he was the officer who ran § 87(2)(b)'s ID. Therefore, allegations B, D, and E are pleaded against PO Konen and allegation C is pleaded against PO Taylor.
- § 87(2)(b) stated that he could not see which officer kned him in the back. No officer admitted to doing so. Therefore, allegation G is pleaded against "an officer" from PSA1.

Investigation Findings and Recommendations

Allegations Not Pleaded

Because the force allegedly used by PO Taylor, i.e., grabbing § 87(2)(b)'s legs, was used in the course of arresting § 87(2)(b) and placing him in a police vehicle and was not an independent act of force, no allegation of physical force is pleaded against PO Taylor. Though PO Taylor admitted to frisking § 87(2)(b) did not make this allegation, it is not pleaded.

Allegation A – Abuse of Authority: PO Michael Walsh questioned § 87(2)(b)

Allegation B – Abuse of Authority: PO Joshua Konen questioned § 87(2)(b)

Allegation C – Abuse of Authority: PO Jermaine Taylor questioned § 87(2)(b)

It is undisputed that PO Walsh, PO Konen, and PO Taylor approached and questioned § 87(2)(b). § 87(2)(b) stated that PO Walsh asked why § 87(2)(b) had his hand near his waist. § 87(2)(b) stated that he had been walking for several minutes repeatedly taking his phone out of his

right front pocket, sending text messages, and returning it to that pocket. § 87(2)(b) stated that he also repeatedly pulled up his pants by the right side of his pants.

The officers' stated that they had observed § 87(2)(b) yelling and cursing to no one and passers-by appeared to be avoiding § 87(2)(b) by walking away from him. The officers stated that they approached him to inquire about his behavior. PO Walsh specifically stated that § 87(2)(b) was approached because he was engaging in disorderly conduct and that a concern about weapons was not a reason they approached § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

When an officer asks an individual questions that would cause the individual to believe he was suspected of wrongdoing, the officer is engaging in a common-law inquiry that requires a founded suspicion that criminality is afoot. People v. Hollman, 79 N.Y.2d 181, 185 (1992) (encl. 1D-K). Reaching under a jacket and adjusting an object can give rise to a justified common-law inquiry. People v. Marine, 142 A.D.2d 368, 369-70 (1989) (encl. 1A-C). Under the New York State Penal Law, disorderly conduct is defined, in part, as creating excessive noise and using obscenities and in doing so causing public alarm or annoyance. N.Y.S. P.L., 240.20 (encl. 1N).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation D – Abuse of Authority: PO Joshua Konen frisked § 87(2)(b)

Allegation E – Abuse of Authority: PO Joshua Konen searched § 87(2)(b)

Allegation H – Discourtesy: PO Michael Walsh spoke discourteously to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) alleged that PO Konen conducted both a frisk and search prior to obtaining his ID. § 87(2)(b) stated that PO Konen patted down his sweatshirt pocket and his pants and reached into his pants and sweatshirt pocket. § 87(2)(b) also alleged that PO Walsh made the following statements: “You fucking pussy. I thought you were going to cry for your mother next,” and, “That bullshit don’t work.” The second statement was allegedly made in response to § 87(2)(b) producing a “Legal Defender” shield.

PO Konen and PO Taylor stated that § 87(2)(b) was frisked prior to being placed in the officers’ van, at which point § 87(2)(b) was being placed into a police vehicle to be transported back to the stationhouse to either be arrested or issued a summons for disorderly conduct. All of the officers denied that § 87(2)(b) was searched. PO Walsh denied using profanities during the incident and PO Konen and PO Taylor corroborated this testimony. All three also stated that they did not recall § 87(2)(b) producing a card or shield of any sort. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation F – Force: PO Michael Walsh used physical force against § 87(2)(b)

Allegation G – Force: An officer used physical force against § 87(2)(b)

It is undisputed that some force was used to place § 87(2)(b) in handcuffs. § 87(2)(b) alleged that PO Walsh grabbed him off of the fence, on which he was sitting, by the arms, that an officer kned him in the back causing him to fall to the ground and sustain a two inch cut on his

head and pain to his back, and that PO Taylor helped place him in the van by picking him up by the feet to put him into the van on his stomach. § 87(2)(b) admitted to pulling away from PO Walsh, verbally refusing to move up against a vehicle, and verbally and attempting to physically refuse to get in the van by pulling away from the officers. § 87(2)(b) stated that he was unable to get away from the officers when they were placing him in the van because they were stronger than he was.

PO Walsh admitted to grabbing § 87(2)(b) by the arm to place him in handcuffs. However, no officer admitted to kneeling § 87(2)(b) in the back or picking him up by his feet to place him in the van. The officers stated that § 87(2)(b) fell to the ground because he went limp when the officers attempted to handcuff him. They also stated that they did not observe any injuries on § 87(2)(b). PO Walsh stated that § 87(2)(b) apologized at the stationhouse and was released with a summons.

§ 87(2)(b), § 87(2)(g)

Patrol Guide section 203-11 states that an officer must use the minimal force necessary to overcome resistance to police action and to affect an arrest (encl. 1L-M). § 87(2)(b), § 87(2)(g)

Team: 6

Investigator:	<u>Jacqueline Levy</u>	
	Signature	Print Date

Supervisor:		
	Title/Signature	Print Date

Reviewer:		
	Title/Signature	Print Date

Reviewer:		
	Title/Signature	Print Date